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Reply to New York office

May 8, 2014

**VIA ECF**

Hon. Arthur D. Spatt  
United States District Court  
100 Federal Plaza  
Central Islip, New York 11722

Hon. A. Kathleen Tomlinson  
United States District Court  
100 Federal Plaza  
Central Islip, New York 11722

**Re: Chiquita Fresh North America, LLC v. Long Island Banana Corp;  
Case No. 14-cv-982**

Your Honors:

We are in receipt of defendants' letter to the Court dated May 8, 2014, and hereby oppose the request to stay the hearing to determine whether the proceeds from the sale of the property located at 596 Merrick Road are a PACA trust asset (the "596 Hearing").


While plaintiffs believe defendants' motion to dismiss will ultimately fail, the pendency of the motion to dismiss should have no bearing on whether or not the 596 Hearing should proceed. As reflected in the docket, on the morning of April 4, 2014, Judge Spatt first directed that the 596 Hearing be held. Plaintiffs did not file an amended complaint until later that afternoon. Therefore, the Court must have concluded that sufficient cause existed for the 596 Hearing without regard to whether or not Brook Enterprises Ltd. was a defendant in this action.

Furthermore, as defendants readily admit that the proceeds from the sale of 596 Merrick Road were dissipated, in part to pay the legal bills of defendant Thomas J. Hoey, Jr., it is critical that the 596 Hearing proceed as expeditiously as possible to ensure that any funds to which plaintiffs may be entitled can ultimately be recovered.

Hon. Arthur D. Spatt  
Hon. A. Kathleen Tomlinson  
May 8, 2014  
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Based on the foregoing it is respectfully requested that defendants' application be denied, and that the 596 Hearing proceed as scheduled. Thank you for your continuing attention to this matter.

Respectfully yours,  
McCarron & Diess

By:   
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Gregory Brown

cc.: All Counsel of Record (via ECF)